(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 1234 / 2005

Petitioner : M/s Mangilal Pagaria, Builders and Contractors. A Firm registered under Indian Partnership Act, Represented through Susheel Chandra Pagaria, Partner, Pagaria House, Near Bus Stand, Jeewan Beema Marg, Pandri, Raipur-(C.G.)

P.R.No. 1366/05
Presented by Shri Pawan Tiwari
dated 31-03-05

Versus

Respondents : 1. State of Chhattisgarh, Through The Secretary Law Mantralaya, D.K.S. Bhawan, Raipur, Dist : Raipur-(C.G.)

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2. The Municipal Corporation, Through – Commissioner, Municipal Corporation Raipur-(C.G.).

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF MANDAMUS / CERTIORARI AND / OR FOR ORDERS IN NATURE OF WRITS.

(68)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 1234 सन् 2004 05

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

DIVISION BENCH: -

HON'BLE MR. A.K. PATNAIK, CJ
& HON'BLE MR. SUNIL KUMAR SINHA, J.

20/06/2005: -

Heard Mr. Kishore Bhaduri learned counsel for the petitioner, Mr. Pramod Verma, learned Addl. Advocate General, for the State of Chhattisgarh/respondent No.1 and Mr. H.B. Agrawal, Sr. Advocate, with Miss Sangeeta Mishra, learned counsel for respondent No.2.

The petitioner has constructed the new bus stand complex at Pandri, Raipur pursuant to the contract awarded to the petitioner by the Madhya Pradesh State Road Transport Corporation. The case of the petitioner is that the map, lay out etc were provided to the petitioner by the Madhya Pradesh State Road Transport Corporation after due sanction by the Municipal Corporation and Town and Country Planning Department. But Raipur Municipal Corporation started threatening demolition of the building on the ground that the said construction has not been made in accordance with the approved plan. The petitioner has filed a civil suit in the Court of learned Civil Judge, Class-I, Raipur against Raipur Municipal Corporation and has also filed an application for temporary injunction. The said application for temporary injunction is pending before the learned Civil Judge. Section 401 of the Chhattisgarh Municipal Corporation Act, 1965 (for short "the Act") however provides that no suit shall be instituted against the Corporation in respect of any act done or purporting to have been done in pursuance or execution or intended execution of the Act, or any rule or by law made thereunder until the expiration of one month next

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

after notice in writing has been delivered or left at the Chief Corporation Office stating adequate particulars relating to (a) the cause of action; (b) the name and residence of the intending plaintiff and of his advocate, pleader or agent, if any, for the purpose of the suit; and (c) the relief which he claims. The Raipur Municipal Corporation has filed a written statement in the said suit pleading inter alia that the suit of the petitioner is not maintainable as notice in terms of Section 401 of the Act has not been served on the Raipur Municipal Corporation before the suit was filed. The petitioner has filed this writ petition under Article 226 of the Constitution of India for declaring the aforesaid provisions of Section 401 of the Act as ultra vires to the Constitution.

On a query by the Court as to how two parallel proceedings in respect of same cause of action can be maintained by the petitioner by way of a civil suit before the Civil Court and by way of a writ petition before this Court, Mr. Bhaduri submitted that in the civil suit the vires of Section 401 of the Act perhaps cannot be challenged and for this reason the petitioner has approached this Court under Article 226 of the Constitution of India challenging the vires of the said Section 401 of the Act.

We are unable to appreciate the aforesaid submission of Mr. Bhaduri. Section 9 of the Code of Civil Procedure, 1908 provides that the Courts shall (subject to the provisions contained in the said Code) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. No provision of law and no provision of the Constitution has been brought to our notice by Mr. Bhaduri by which a suit for declaring a provision of an Act as ultra vires

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the Constitution is either expressly of impliedly barred. In the absence of any clear provision either in the Constitution or any other law, expressly or impliedly, providing a bar to a civil suit for declaring a provision of an Act to be ultra vires the Constitution, we fail to see as to how such a suit can be held to be barred. There is, however, a provision made in Section 113 of the Code of Civil Procedure as amended that where the Court is satisfied that a case pending before it involves a question as to the validity of any provision of any Act the determination of which is necessary for the disposal of the case, and is of the opinion that such a provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor and refer the same for the opinion of the High Court. This provision shows that a suit may also involve a question with regard to the validity of a provision of an Act. Hence, it is always open for the petitioner to claim a relief in the civil suit already filed before the Civil Court for declaring the provisions of Section 401 of the Act as ultra vires the Constitution.

Mr. Bhaduri next submitted that although the petitioner has filed an application for temporary injunction in the civil Court, in the event the application for temporary injunction is dismissed by the Civil Court, Raipur Municipal Corporation will not allow any time whatsoever to the petitioner to move the appellate Court and will demolish the constructions made by the petitioner and as a result the petitioner will suffer with grave prejudice. We are of the considered opinion that since the petitioner has a right of appeal against an order refusing temporary injunction, in case the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

application for temporary injunction filed by the petitioner is rejected by the Civil Court atleast fifteen days' time should be given by the Raipur Municipal Corporation to the petitioner to file the appeal before the appellate Court and move an application for interim orders.

In the result, we dispose of this writ petition with the observation that the interim order of status-quo passed by this Court on 04/04/2005 and continued on 03/05/2005 will continue for a period of one month from today and the Civil Court before whom the application for injunction is pending will dispose of the application for injunction of the petitioner within the said period of one month. In case the application for injunction is rejected by the Civil Court, Raipur Municipal Corporation will not demolish the constructions made by the petitioner for a period of fifteen days so that the petitioner gets reasonable time to file an appeal before the appellate Court and move an application for interim orders. We make it clear that we have not expressed any opinion on the merits of the case of any of the parties and the trial Court and the appellate Court will decide the questions raised before them by the parties on their own merits in accordance with law.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

Brajesh.

23.6.05

23.6.05

(पीछे देखिये)